

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

IN RE:	§	Case No. 02-36456-BJH-7
	§	(Jointly Administered)
TEXAS NEXTSTAGE, LP, et al,	§	Chapter 7
Debtor.	§	
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	§	
ROBERT NEWHOUSE, TRUSTEE,	§	
Plaintiff,	§	
V.	§	
	§	
ALKEK & WILLIAMS OIL, LTD., ARENA	§	
PARTNERS, FSI NO. 2 CORPORATION,	§	
J. CHRISTOPHER JAFFE, JAFFE HOLDEN	§	
ACOUSTICS, INC., ANDREW LINBECK,	§	
LINBECK CORPORATION, MAXXAM,	§	ADVERSARY NO. _____
INC., JAMES W. McCARTNEY, DUNCAN	§	
J. PALMER, PETERSON VENTURES I,	§	
L.L.C., GARTH SALONER, MARLENE	§	
SALONER, SAN JUAN INVESTMENTS,	§	
LTD., FAYEZ SAROFIM, STAGE	§	
HOLDINGS, L.L.C., ROBERT L. TIMMEL,	§	
ROBERT J. CARDINAL TRUST,	§	
WARBURG, PINCUS EQUITY	§	
PARTNERS, L.P., WARBURG, PINCUS	§	
NETHERLANDS EQUITY PARTNERS I,	§	
C.V., WARBURG, PINCUS NETHERLANDS	§	
EQUITY PARTNERS II, C.V., AND	§	
WARBURG, PINCUS NETHERLANDS	§	
EQUITY PARTNERS III, C.V., REUBEN	§	
LIEBOWITZ, JOANNE WENIG, JOHN	§	
SANTOLERI, AND IAN MORGAN,	§	
Defendants.	§	

**COMPLAINT FOR DECLARATORY JUDGMENT**

TO THE HONORABLE BARBARA J. HOUSER, UNITED STATES BANKRUPTCY JUDGE:

COMES NOW, Robert Newhouse (the "Trustee"), in his capacity as the chapter 7 trustee for NextStage Entertainment Corporation (the "Debtor"), and files this Complaint for Declaratory

Judgment against (a) Alkek & Williams Oil, Ltd., Arena Partners, FSI No. 2 Corporation, J. Christopher Jaffe, Jaffe Holden Acoustics, Inc., Andrew Linbeck, Linbeck Corporation, Maxxam, Inc., James W. McCartney, Duncan J. Palmer, Peterson Ventures I, L.L.C., Garth Saloner, Marlene Saloner, San Juan Investments, Ltd., Fayez Sarofim, Stage Holdings, L.L.C., Robert L. Timmel, and Robert J. Cardinal Trust (collectively the “Minority Shareholders”) and (b) Warburg, Pincus Equity Partners, L.P.; Warburg, Pincus Netherlands Equity Partners I, C.V.; Warburg, Pincus Netherlands Equity Partners II, C.V.; and Warburg, Pincus Netherlands Equity Partners III, C.V., Reuben Liebowitz, Joanne Wenig, John Santoleri, and Ian Morgan (collectively the “Warburg Parties,” and together with the Minority Shareholders, the “Defendants”). The Trustee alleges as follows:

### **PARTIES**

1. The Plaintiff is the chapter 7 trustee for the Debtor in the above-referenced chapter 7 bankruptcy case.
2. The Minority Shareholders are individuals and entities that can be served with process through their counsel of record from the Debtor’s bankruptcy case, Chris Reynolds, Gibbs & Bruns, L.L.P., 1100 Louisiana, Suite 5300, Houston, Texas 77002.
3. The Warburg Parties are individuals and entities that can be served with process through their counsel of record from the Debtor’s bankruptcy case, Josiah M. Daniel, III, Vinson & Elkins, L.L.P., 3700 Trammell Crow Center, 2001 Ross Avenue, Dallas, Texas 75201.

### **JURISDICTION AND VENUE**

4. This Court has jurisdiction over this matter pursuant to the provisions of 28 U.S.C. §§ 1334 and 157. This matter constitutes a “core” proceeding within the meaning of 28 U.S.C. § 157(b)(2).

5. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409 because the Debtor's chapter 7 bankruptcy case is pending in this district and the cause of action asserted herein arises in or is related to that case.

### **STATEMENT OF RELEVANT FACTS**

6. On or about November 4, 2003, the Minority Shareholders filed a lawsuit in Harris County District Court against the Warburg Parties styled *Alkek and Williams Oil, Ltd., et al. vs. Warburg Pincus Equity Partners, LP, et al.*, Case No. 2003-61154 (Harris County Dist. Court, 280th Judicial Dist.) (the "State Court Lawsuit").

7. A true and correct copy of the most recent petition filed by the Minority Shareholders in the State Court Lawsuit is attached hereto as Exhibit "A" and is fully incorporated herein.

8. In the State Court Lawsuit, the Minority Shareholders assert causes of action against the Warburg Parties for breach of fiduciary duty, minority shareholder oppression, aiding and abetting breach of fiduciary duty and minority shareholder oppression, breach of duty of loyalty, and declaratory judgment (the "Subject Causes of Action").

9. The Trustee and the Warburg Parties contend that the Subject Causes of Action are property of the Debtor's bankruptcy estate.

10. The Trustee filed a motion to approve a settlement agreement between the Debtor and the Warburg Parties to settle, among other things, the Subject Causes of Action. The Minority Shareholders objected to the proposed settlement, arguing among other things that the Subject Causes of action belong to them rather than the Debtor's bankruptcy estate. After hearings on December 13, 2004 and January 5, 2005, the Court denied, without prejudice, the proposed settlement.

**COUNT I – DECLARATORY JUDGMENT**

11. Plaintiff hereby incorporates all of the foregoing and ensuing allegations as if fully set forth hereat.

12. An actual controversy exists among the Trustee, the Minority Shareholders, and the Warburg Parties over whether the Subject Causes of Action belong to the Debtor's bankruptcy estate.

13. Pursuant to 28 U.S.C. § 2201(a), the Trustee requests that the Court declare that the Subject Causes of Action are property of the Debtor's bankruptcy estate within the meaning of 11 U.S.C. § 541(a).

**CONCLUSION**

WHEREFORE, the Plaintiff requests judgment against Defendants as follows:

- a. declaring that the Subject Causes of Action are property of the Debtor's bankruptcy estate; and
- b. granting the Plaintiff such other and further relief, at law or in equity, to which he may be justly entitled.

Respectfully submitted,

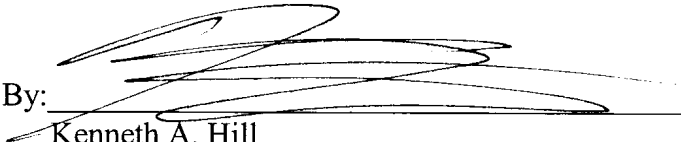
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By: 

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ATTORNEYS FOR THE PLAINTIFF